

TRANSPORTATION REPORT

From: Terry Whiteside

To: The Montana Wheat & Barley Committee

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Fight Brewing Between Senate Committees Over Repeal of Rail Antitrust Exemption

By Leah Nylen, CQ Staff

A jurisdictional squabble between two Senate committees could derail passage of a measure aimed at repealing an antitrust exemption for freight railroads.

The legislation (S 146), sponsored by Sen. Herb Kohl, D-Wis., would eliminate a long-standing exemption to antitrust laws that allows railroads to gain approval from the Surface Transportation Board (STB) for rail mergers, acquisitions and collective rate-making agreements. The repeal is designed to bring rail in line with other transportation industries, such as trucking and aviation, which must seek approval from the Justice Department for such business steps.

The Senate is scheduled to take a cloture vote on a motion to proceed to consideration of the bill on June 2, the day after it returns from its Memorial Day recess. Sixty votes would be required to limit debate and proceed to the legislation.

On Tuesday, four leaders of the Senate Commerce, Science and Transportation Committee and its relevant subcommittee sent a "Dear Colleague" letter urging senators to vote against cloture, saying that premature passage of the railroad antitrust measure could undermine a future STB reauthorization.

Commerce Committee Chairman John D. Rockefeller IV, D-W.Va., and Frank R. Lautenberg, D-N.J., who chairs the subcommittee on surface transportation, have been

working on legislation that would reauthorize the STB. That measure, which has yet to be introduced, would likely revamp rail competition rules and seek to address the concerns of shippers.

The letter was signed by Rockefeller, Lautenberg and their ranking Republican counterparts, Kay Bailey Hutchison of Texas and John Thune of South Dakota.

“We strongly believe that regulation of railroads should be addressed in a comprehensive manner rather than in a piecemeal fashion focused on one narrow aspect,” the letter said. “While we support strengthening the application of the antitrust laws to the railroad industry, and will work to do so as part of a final package, S 146 is much more expansive and touches on matters squarely within the jurisdiction of the Commerce Committee and the subject of our bill.”

Kohl and other bill supporters say railroads have used their antitrust exemption to raise rates unfairly. Because of mergers, four Class I railroads — the large freight carriers — provide 90 percent of rail transportation, leaving some areas of the country with service from only one railroad. Bill advocates say industries in these areas, known as captive shippers, have little choice but to pay the railroad's rate.

The Senate Judiciary Committee, which has jurisdiction over antitrust issues, approved the repeal legislation by 14-0 on March 5.

At a House Judiciary subcommittee hearing last week on companion legislation (HR 233), a representative for the American Association of Railroads took a position similar to that of the Commerce Committee senators. J. Michael Hemmer, a senior vice president with Union Pacific Railroad, said the organization was not universally opposed to greater antitrust regulation but added that economic regulations should be coordinated with antitrust oversight to prevent conflicts between the regulatory regimes of the STB and the Department of Justice.

“Antitrust laws should be carefully and thoughtfully integrated with existing regulation or whatever legislation is proposed from the Commerce committees,” Hemmer said. “Pushing forward with laws that address the same subject matter can only produce confusion for all stakeholders in rail transportation, and involve the courts and agencies in years of litigation to unwind the confusion.”

Editors Note: It is important that the two Senators and their respective Senate Committees work out their differences before the cloture vote on June 2nd. Both Senators are extolling shippers to help them - one to seek out votes for cloture and one to seek out votes against cloture. This, of course, puts shippers in a difficult position. The Senate Commerce Committee of course, is working on an STB/captive shipper reform bill and that bill holds perhaps the most promise for relief from lack of competition for captive shippers but passage of both bills is important. The railroads seek no changes to current regulatory environment

and will be working hard to exploit this disagreement and make sure this disagreement between the Senators makes the path to passage of either of the bills more difficult. This is the system that we work in, however, it is very important for shippers from all industries to look at this as progress. We have been working for many years to get these bills to fruition and it looks like that is becoming a reality.

Will delay of the cloture vote - or even a no vote on cloture derail the anti-trust bill or the STB reform/captive shipper legislation? Probably not....this Congress is headed to ultimate passage of captive shipper legislation of some form. What we have here is two Senators who feel passionately about doing something to change the four railroads market dominated landscape in America and help the shippers who have little or no competition alternative.

And that is progress.